IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

FAO(HMA) NO.501 of 2000

Judgment Reserved on:7.5.2007

Date of Decision: 15.5.2007

Meera Harish ……Appellant

Versus

Parveen Kumar Harish …… Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? No.

For the Appellant : Mr. Dushyant Dadwal, Advocate.

For the respondent : Mr. M.L. Brakta, Advocate

Kuldip Singh, J

The respondent-wife is in appeal against judgment, decree dated 7.8.2000/10.8.2000 passed by learned District Judge, Shimla in H.M.A. No.30-S/3 of 1998, allowing petition and granting decree of divorce . For convenience the parties in this judgment are referred in the same manner as in the trial Court.

The brief facts are that the petitioner-husband filed divorce petition under Section 13 of the Hindu Marriage Act, for dissolution of his marriage with respondent-wife on the grounds of cruelty and desertion. It is the case of the petitioner that parties got married on 12.12.1988 and lived together upto 13.7.1992 when the respondent deserted the petitioner and started living separately. A male child was born on 4.1.1990. The respondent has treated the petitioner with cruelty, in as much as a few months of the solemnization of the marriage, she

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W*hether reporters of Local Papers may be allowed to see the Judgment? yes*

started behaving in a rude and dis-respectful manner with the petitioner and his parents. She was not only discourteous but she even hurled abuses at the petitioner and his parents. Once she gave beating to his mother. She also assaulted the petitioner. She never stayed at the petitioner's house for more than 2-3 months in continuity. She would leave for her mother place without informing the petitioner or his parents and stayed there for months. She would return only when the petitioner accompanied by his father or some other close relatives visited her mother's place persuaded her to return to the matrimonial home.

It is also the case of the petitioner that she lodged complaints to various authorities against the petitioner. She filed a writ petition in the High Court by making false accusation that she had been turned out of the matrimonial home, when she could not meet the illegal demand of the petitioner and his parents for want of dowry. She also lodged a false complaint to the employer of the petitioner with the intention of getting him removed from service. She lodged a false report with the police that she has been subjected to cruelty for not bringing sufficient dowry. The police challaned the petitioner, his old parents and a married sister. They were acquitted by Judicial Magistrate on 24.2.1998. She also lodged a report under Section 107/150 of the Code of Criminal Procedure against the petitioner, his parents, who faced inquiry in the Court of Sub Divisional Magistrate.

The respondent contested the petition by filing reply. It is her case that she was thrown out of the matrimonial home but she is still ready and willing to join the company of the petitioner. She denied that she ever treated the petitioner with cruelty or humiliated him or his parents or any other family member. According to her petitioner's parents ill-treated her as they did not want her to live with the petitioner. She has not specifically denied lodging of various

complaints by her to the authorities against the petitioner and his parents.

The learned District Judge allowed the petition on cruelty as well as desertion vide impugned judgment, decree, therefore, the wife is in appeal.

I have heard learned counsel for the parties and have also gone through the record.

The learned counsel for the respondent- wife has submitted that the learned District Judge has misread the evidence on record. He has submitted that petitioner and his parents compelled the respondent to live separately and they can not take benefit of their own wrong.

On the contrary learned counsel for the petitioner-husband has submitted that the learned trial Court after appreciation of evidence has rightly concluded that respondent-wife has treated the petitioner with cruelty but she has deserted him also. He has submitted that behaviour of the wife towards petitioner and his family members remained very pungent. She ill-treated them. She lodged false complaints before authorities and to the employer of the petitioner. He has submitted that there is irretrievable break down of the marriage. It is not possible for petitioner to live with his wife. He has supported the judgment, decree passed by the learned District Judge.

PW-1 Vinod Kumar has placed on record Ex.P-1, copy of judgment dated 24..2.1998 passed by learned Judicial Magistrate, Ist Class, Court No.1, Shimla under Sections 498-A, 325, 506 IPC against Om Parkash, Parveen Kumar, Shanti Devi and Shobha Devi. PW-2 Devi Singh has placed on record the copy of judgment dated 22.10.1990 passed in Cr.W.P. No.28/90 filed by Mrs. Meera Harish in which besides others Om Parkash Harish father of the petitioner and

petitioner himself are the parties. He has also placed on record Ex.P-3 letter/representation dated 3.8.1990 of petitioner addressed to Hon'ble the Chief Justice. PW-3 Parmod Singh has proved Ex.P-4 ,FIR NO.178/92 and Ex.P-5 report NO.17 dated 19.7.1990. PW-4 Joshinder, has proved Ex.P-6 notice under Section 111 Cr. P.C. issued to Parveen Kumar, Om Parkash and Shanti Devi on the basis of complaint of petitioner. PW-5 Ram Singh Mastana has proved the complaints Exts. P-7 to Exts. P-10 addressed by respondent to the employer of the petitioner-husband. Parveen Kumar petitioner himself appeared as PW-6 and has supported his case in general. He has proved bail orders Ex.P-11 to Ex.P-13 He has been cross-examined at length but nothing favourable to the respondent has been extracted in his cross-examination. PW-7 Om parkash is the father of the petitioner. He has also supported the case of his son. He has deposed that 3-4 months after the marriage, the respondent started creating scenes, her behaviour with him and other family members was not good. She used to call them names and at times she would try to assault them. He has also stated that once respondent gave a blow of a bottle on the chest of his son and he was to be hospitalized for that blow. The behaviour of the respondent was not normal except for the initial 3-4 months. She even used force against his wife and slapped her. She would stay at their house for a month or 2-4 months and then go to her mother's place . She lived with them upto 13.7.1992 on which date she left for her mother place. He has also stated that twice he went to bring her back to the matrimonial home, but she and her father hurled abuses at him and threatened that they would see him in the Court. In his cross-examination nothing favourable to the respondent was extracted. PW-8 Balak Ram is a neighbour of the parties. He has stated that to take water he used to visit the house of

the parties and often he heard the respondent shouting at the petitioner and his family members. Respondent has appeared as RW-1. She has stated that for about 3-4 months after the marriage she remained happy at the house of the petitioner but thereafter his mother started taunting her for not having brought dowry of her expectation. She has stated that her mother-in-law and father-in-law and petitioner started giving beatings to her. She has stated that on 12.7.1992 she was thrown out of her matrimonial home and thereafter she started living separately. In cross-examination she has admitted that sisters of the petitioner were already married before her marriage with the petitioner. She has stated that now she want to live with the petitioner. She admitted the filing of case against the petitioner etc. under Section 498-A IPC . She has also admitted having filed a complaint in the High Court. She has also stated that the petitioner, his father and some relatives visited her father to bring her back to the matrimonial home. RW-2 Rukmani Devi is the mother of the respondent. She has stated that for about 4-5 months the respondent lived happily at her husband's place. Thereafter petitioner and his parents started quarreling with her daughter and also started beating her. She has admitted that house of the petitioner is located in a thickly populated locality. RW-3 Raj Kumar is the brother of the respondent, his statement is general in nature.

The case of the respondent is that she lived happily with the petitioner for about 3-4 months but than she was ill-treated for not bringing sufficient dowry and thereafter the petitioner and his parents started beating her and ultimately she left the matrimonial home on 12.7.1992 as she was thrown out. The respondent has not controverted the evidence of the petitioner that her treatment towards petitioner, his father, mother and family members was rude and she

even abused them. The father of the petitioner has given one instance of assault of respondent when she gave a blow of bottle on the chest of petitioner for which was hospitalized . She filed criminal case against the petitioner, his father, mother and sisters under Section 498-A PC and they were acquitted in that case. She also lodged a complaints against the petitioner with his employer. She also started proceedings against the petitioner, his father, mother under Sections 107/150 Cr.P.C. The respondent has changed her stand during the trial. She has alleged that she was taunted and beaten by her mother-in-law, father-in-law for not bringing the dowry of their expectations.

In the reply the only case of the respondent is that petitioner himself has thrown out the respondent and he was not willing to bring her back. She has also alleged that the parents of the petitioner maltreated her but this is not her case that her maltreatment is for not bringing of dowry. In her statement she has not stated that prior to 12..7.1992 she was ever ill-treated by the petitioner. She has not even stated that the complaint lodged by her to the authorities were true. The testimony of the petitioner that such complaints were false remains un-controverted. Making of false accusation of physical torture and demand of dowry constitutes cruelty within the meaning of Section 13(i)(a) of the Hindu Marriage Act. Learned District Judge after appreciation of evidence has rightly come to the conclusion that respondent has treated the petitioner with cruelty.

It is admitted case of the respondent that since 12.7.1992 she is living separately. The case of the respondent for living separately since 12.7.1992 for the reasons that petitioner and his family members have ill-treated her has not been proved by her. On the contrary the respondent without any reasonable cause is living separately. The offer of the respondent now to live with the petitioner is too late. The

petition has been filed on the cause of action as pleaded in the petition. This cannot be nullified by the offer of the petitioner to live with the petitioner later on. Even otherwise the offer of the respondent to live with the petitioner does not appear to be genuine. The learned District Judge has rightly come to the conclusion that the respondent has deserted the petitioner. The respondent has failed to point out any mis-reading, mis-appreciation of the material on record. There is irretrievable break down of marriage . In ***Naveen Kohli v. Neelu Kohli, AIR 2006 Supreme Court 1675,*** the Hon'ble Supreme Court has held as follows:-

> "***In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond".***

In the present case also, the parties are living separately since July, 1992 as per the admission of the respondent. There is complete break down of the marriage. No purpose will be served by uniting the parties under compulsion. Therefore, impugned judgment, decree requires no interference.

In view of above discussion the appeal is dismissed. The impugned judgment and decree is upheld. No order as to costs.

(Kuldip Singh)
Judge

May 15, 2007
(sks)